

CBE-10-023- 5026 River Drive

Staff report for the October 14, 2009 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

Summary Facts

Applicant	Bill and Anne McCann
Land Owner	same
Location	5026 River Drive, Lanexa VA, Cypress Point
Parcel ID	0930300004
Staff Contact	Patrick Menichino Phone: 253-6675

Project Summary and Description

Bill and Anne McCann have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a 5' wide staircase, a 20'x18' detached deck, a 8'x6' lower landing, and 65 linear feet of timber wood retaining wall at the rear of their property on the above referenced lot in Cypress Point. The staircase, deck, landing, and retaining wall will create approximately 573 square feet of impervious cover in the RPA.

The lot is 21,967 square feet or 0.505 acres in size. It is located adjacent to Diascund Creek, a tributary to the Chickahominy River. The RPA buffer located on the lot encompasses 0.284 acres or approximately 56% of the lot. There is an existing residence on the lot that encroaches into the 100-foot RPA buffer. No mature vegetation will be removed from the lot to allow for the placement of the proposed staircase, detached deck, lower landing and retaining wall.

A detailed RPA Mitigation Planting Plan (Plan) has been provided with the exception request that proposes to mitigate for the 573 square feet of impervious area by planting (3) native canopy trees, and (10) native shrubs in planting beds to filter runoff from the impervious areas. This plan generally meets the standard mitigation requirements of the County.

Staff offers the following guidance to the Board:

1. The staircase is considered to be providing access to water and as such, is permitted. The proposed 18' x 20' wood deck and 8' x 6' lower landing are detached from the residence and therefore should be considered as accessory structures. The retaining wall should also be considered as an accessory structure.

2. Staff considers the size of the proposed deck to be more than the minimum necessary to afford relief and the deck is proposed within the seaward 50 foot buffer.
3. The applicant has submitted an RPA Plan that generally meets the County's typical planting requirements for impervious cover.
4. Staff evaluated the adverse water quality impacts caused by the additional 573 square feet of impervious area within the seaward 50 foot to be moderate.
5. Staff recommends the Board consider a reduction in the size of the proposed deck, or a significant increase in onsite mitigation to offset the adverse water quality impacts.

Background

The lot was recorded prior to the adoption of the Ordinance, and there was no RPA present on the lot at recordation. On August 6, 1990, the Ordinance went into effect establishing 100 foot RPA buffers around all water bodies with perennial flow. Diascund Creek was then identified as a perennial water body on the quad map and an RPA buffer was placed on the lot. This 100 foot RPA buffer encompasses about 56% of the lot.

In this case, the exception request is for a 5' wide staircase, a 20'x18' detached deck, a 8'x6' lower landing and 65 linear feet of timber wood retaining wall which does not qualify for an administrative waiver because the request is for accessory structures. In accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

The issue for the Board's consideration is the 573 square feet of impervious area created by the proposed accessory structures within the seaward 50 foot RPA buffer.

Water Quality Impact Assessment (WQIA)

Under Section 23-14 of the amended Ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPA. The applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA generally offsets the proposed impervious cover impacts by planting (3) native canopy trees, and (10) native shrubs within the RPA buffer to help filter runoff.

The owners have submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The Board is to determine whether or not the proposed development is consistent with the spirit and intent of the Ordinance and make a finding based upon the following criteria, as outlined in Section 23-14(c) of the Chesapeake Bay Ordinance:

1. The exception request is the minimum necessary to afford relief;

2. Granting the exception will not confer upon the applicant any special privileges denied by this chapter to other property owners similarly situated in the vicinity;
3. The exception request will be in harmony with the purpose and intent of this chapter, and is not of substantial detriment to water quality;
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality

Recommendations

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within RPA buffer.

Staff has evaluated the adverse impacts associated with the proposed accessory structures and has determined them to be moderate.

The Board has, in the past, granted an exception request for a staircase and deck combination to provide access to the water. In that particular case the Board did evaluate the size of the proposed deck, and required additional mitigation to offset for the adverse water quality impacts. Staff recommends the Board evaluate the need for the size of the deck proposed, or consider a significant increase in onsite mitigation to offset the adverse water quality impacts.

Should the Board vote to approve the exception, Staff recommends the following conditions be applied:

1. If required by the Board, revisions to the proposal and RPA Plan shall be submitted to the Environmental Division for review and approval.
2. Full implementation of the RPA Mitigation Planting Plan and additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
3. The size of the trees planted shall be a minimum of 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3 gallon size. All vegetation shall be native species approved by the Environmental Division.
4. The deck and landing shall have 3 inches of gravel on filter fabric installed underneath.
5. This exception request approval shall become null and void if construction has not begun by October 14, 2010, or all improvements including the required mitigation plantings are not completed by that expiration date.

6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

All recommendations adopted by the Board must be incorporated into the site plans for the project, which then must be approved by the Environmental Division before construction can begin.

Staff Report prepared by: _____
Patrick Menichino
Compliance Specialist

CONCUR: _____
Scott J. Thomas
Secretary to the Board

Attachments: